

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY BARBARIAN,

Plaintiff,

v.

C.D.C.R., et al.,

Defendants.

No. 2:23-cv-00987-DJC-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

I. Screening Requirement

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

A complaint, or portion thereof, should only be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

II. Allegations in the Complaint

Plaintiff alleges that he was a victim of "electronic harassment" and "remote neural monitoring" by two inmates while he was incarcerated at California State Prison-Sacramento. He informed the warden but his grievance was denied.

1 By way of relief, plaintiff seeks an FBI investigation, the purchase of
2 equipment/technology to prevent his electronic harassment, the reversal of his administrative
3 grievance, and compensatory damages.

4 **III. Legal Standards**

5 The following legal standards are provided based on plaintiff's pro se status as well as the
6 nature of the allegations in the complaint.

7 **A. Linkage**

8 The civil rights statute requires that there be an actual connection or link between the
9 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
10 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
11 (1976). The Ninth Circuit has held that "[a] person 'subjects' another to the deprivation of a
12 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
13 in another's affirmative acts or omits to perform an act which he is legally required to do that
14 causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th
15 Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must
16 link each named defendant with some affirmative act or omission that demonstrates a violation of
17 plaintiff's federal rights.

18 **B. Supervisory Liability**

19 Government officials may not be held liable for the unconstitutional conduct of their
20 subordinates under a theory of respondeat superior. Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009)
21 ("In a § 1983 suit ... the term "supervisory liability" is a misnomer. Absent vicarious liability,
22 each Government official, his or her title notwithstanding is only liable for his or her own
23 misconduct."). When the named defendant holds a supervisory position, the causal link between
24 the defendant and the claimed constitutional violation must be specifically alleged; that is, a
25 plaintiff must allege some facts indicating that the defendant either personally participated in or
26 directed the alleged deprivation of constitutional rights or knew of the violations and failed to act
27 to prevent them. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Taylor v. List, 880 F.2d
28 1040, 1045 (9th Cir. 1989); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978).

1 **C. Grievance Administrators**

2 The existence of a prison grievance procedure establishes a procedural right only and
3 “does not confer any substantive right upon the inmates.” Buckley v. Barlow, 997 F.2d 494, 495
4 (8th Cir. 1993) (citation omitted); see also Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003)
5 (no liberty interest in processing of appeals because no entitlement to a specific grievance
6 procedure). This means that a prison official’s action in reviewing an inmate grievance cannot
7 serve as a basis for liability under Section 1983. Buckley, 997 F.2d at 495. “Only persons who
8 cause or participate in the violations are responsible. Ruling against a prisoner on an
9 administrative complaint does not cause or contribute to the violation. A guard who stands and
10 watches while another guard beats a prisoner violates the Constitution; a guard who rejects an
11 administrative complaint about a completed act of misconduct does not.” George v. Smith, 507
12 F.3d 605, 609-10 (7th Cir. 2007) (citations omitted).

13 **IV. Analysis**

14 The court finds the allegations in plaintiff’s complaint so vague and conclusory that it is
15 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
16 court has determined that the complaint does not contain a short and plain statement as required
17 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a
18 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones
19 v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least
20 some degree of particularity overt acts which defendants engaged in that support plaintiff’s claim.
21 Id. The warden’s review of plaintiff’s grievance is not sufficient state a claim for relief. See
22 George v. Smith, 507 F.3d 605, 609-10 (7th Cir. 2007). For all these reasons, the complaint must
23 be dismissed. The court will, however, grant leave to file an amended complaint.

24 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
25 complained of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v.
26 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how
27 each named defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there
28 is some affirmative link or connection between a defendant’s actions and the claimed deprivation.

1 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
2 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
3 allegations of official participation in civil rights violations are not sufficient. Ivey v. Bd. of
4 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

5 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
6 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
7 complaint be complete in itself without reference to any prior pleading. This is because, as a
8 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
9 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
10 longer serves any function in the case. Therefore, in an amended complaint, as in an original
11 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

12 **V. Plain Language Summary for Pro Se Party**

13 The following information is meant to explain this order in plain English and is not
14 intended as legal advice.

15 The court has reviewed the allegations in your complaint and determined that they do not
16 state any claim against the defendants. Your complaint is being dismissed, but you are being
17 given the chance to fix the problems identified in this screening order.

18 Although you are not required to do so, you may file an amended complaint within 30
19 days from the date of this order. If you choose to file an amended complaint, pay particular
20 attention to the legal standards identified in this order which may apply to your claims.

21 In accordance with the above, IT IS HEREBY ORDERED that:

22 1. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is granted.

23 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
24 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
25 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
26 Director of the California Department of Corrections and Rehabilitation filed concurrently
27 herewith.

28 3. Plaintiff's complaint is dismissed.

1 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
2 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
3 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
4 assigned this case and must be labeled "Amended Complaint"; and, the failure to file an amended
5 complaint in accordance with this order will result in a recommendation that this action be
6 dismissed.

7 Dated: September 28, 2023



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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